

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSE HENRY GONZALEZ,  
Individually and on behalf of all  
others similarly situated,

**AFFIDAVIT**

Plaintiff,

-against-

Case No. 12-CV-3465 (BMC)

AUTO-CHLOR SYSTEM OF NEW YORK  
CITY, INC., et. al.,

Defendants.

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STATE OF NEW YORK)

SS.:

COUNTY OF NASSAU)

KYLE AKSAN, being duly sworn, deposes and says:

1. I have worked for AUTO-CHLOR SYSTEM OF NEW YORK CITY, INC. (hereinafter "Auto-Chlor") for approximately 9 months, or since February, 2012.
2. When I began working for Auto-Chlor, my title was Rebuilder. My duties as a Rebuilder was to maintain all the machines in the warehouse and rebuild them as they come in to the warehouse. My current position at Auto-Chlor is Rebuilder and my job duties are still to maintain all the machines in the warehouse and rebuild them as they come into the warehouse.
3. The person who I reported to at Auto-Chlor when I first began and currently is Rich Dogastino, who is the Route Supervisor. I also report to Mike Bugiada ("Mike"), who is the Regional Manager.

4. When I began working for Auto-Chlor, I was provided with 11 uniforms, which consist of a button down shirt and slacks that have the Auto-Chlor logo on them. My uniforms are cleaned weekly by a company called Aramark. If my uniform gets ratty or torn, Auto-Chlor replaces my uniform. I have never been charged for my uniform.

5. When I first started working for Auto-Chlor, I made \$16.00 per hour plus time and a half for all hours worked over forty in one week. I currently make \$16.00 per hour plus time and a half for overtime.

6. As far as benefits go, Auto-Chlor is very generous. In addition to my regular rate of pay, I also receive paid sick time, holidays and vacation time. Not only that, but Auto-Chlor makes a contribution into a 401(k) account and I have a savings account through Auto-Chlor as well. In addition, Auto-Chlor allows me participate in profit sharing.

7. When I first started working for Auto-Chlor, my regular shift was from 7:30 A.M. until 4:00PM, with a half hour break each day, 5 days a week, or Monday through Friday. In addition to my regular shift, I was also required to work "on call" on a rotation, which resulted in me working on call for one week out of approximately every 6-8 weeks or so.

8. I currently work from 7:30 A.M. until 4:00PM, with a half hour lunch break each day, 5 days a week or Monday through Friday. I still work "on call" on rotation, which results in me working "on call" for one week out of approximately every 5-7 weeks or so.

9. When I am “on call”, I am not required to be at work, but am allowed to do whatever I want so long as I am available a phone call away to respond to customer issues. When a customer reports an issue with their machine when I am “on call”, I am notified and leave wherever I am to service the customer. I am compensated for my “on call” time by keeping time log of the time from when I leave my house, or current location, until I return home, or to my current location. At the end of my “on call” week, I report my time by writing same in the on call book at our office, so that it can be included in that week’s payroll.

10. For the entire time that I have worked for Auto-Chlor, it has always been company policy that “on call” time is compensated from the time we leave our house until the time we return home, and everyone knows that. Everyone also knows that the reporting of our “on call” time is based upon the “honor system” and that our boss relies upon us to accurately report our time. I have always been paid for the time I have reported to my boss and that time has always included my travel time from my home to the customer’s location and my travel time from the customer’s location back home.

11. I have been told that the plaintiff in this case is claiming that the “on call” time is reported from the time we arrive at the customer’s location until the time we leave the customer’s location. That simply is not true and has not been the policy of Auto-Chlor at least as long as I have been here.

12. If I ever had a problem with my paycheck, which I have not, I know that it is Auto-Chlor’s policy that any discrepancy be reported to my boss, Mike, and I know that it would be taken care of immediately.

13. As far as I know, there is not any basis in fact to the claim in Henry's complaint that this it is not Auto-Chlor's policy to pay "on call" time from the time an employee leaves his house to the time he returns home, as that has always been the policy since I've worked for Auto-Chlor. I am not aware of anyone ever not being compensated for their "on call" time from the time they left home until the time they returned thereto.

  
KYLE AKSAN

Sworn to before me this  
25<sup>th</sup> day of October 2012.

  
NOTARY PUBLIC

**Kristin J. Kircheim**  
Notary Public, State of New York  
No. 02K16241500  
Qualified in Nassau County  
Commission Expires May 23, 2015